

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

**NATIONWIDE MUTUAL INSURANCE
COMPANY,**

Plaintiffs,

v.

**PUYALLUP BASKETBALL ACADEMY, a
member of Sports, Leisure & Entertainment
RPG; JONNIE R. BARR and SUE E. BARR,
husband and wife; and SHARI FURNSTAHL,
Guardian *ad litem* for C.F., a minor child;**

Defendants.

No.

**COMPLAINT FOR
DECLARATORY JUDGMENT**

TO THE HONORABLE COURT:

Plaintiff Nationwide Mutual Insurance Company ("Nationwide"), by and through its counsel of record, seeks declaratory judgment pursuant to 28 U.S.C. §2201 and FRCP 57, defining the scope of the contractual duties owed by Nationwide under insurance policies issued to Puyallup Basketball Academy ("PBA"), and respectfully states, alleges, and prays as follows:

I. Parties

1. Plaintiff Nationwide is an insurance company incorporated under the laws of the State of Ohio, where its principal offices are located and where it is domiciled.

**COMPLAINT FOR DECLARATORY JUDGMENT
- 1**

JOHNSON, GRAFFE,
KEY, MONIZ & WICK, LLP
ATTORNEYS AT LAW
925 FOURTH AVENUE, SUITE 2300
SEATTLE, WASHINGTON 98104
PHONE (206) 223-4770
FACSIMILE (206) 386-7344

1 2. Defendant PBA is not incorporated in any state, but is a business operated
2 by the defendants Jonnie and Sue Barr in Puyallup, Washington, at the address of 14111
3 Pioneer Way East, Puyallup, Pierce County, Washington. PBA purports to teach
4 fundamental basketball skills to developing children and youth, and operates “club” or
5 “elite” practices, skills sessions, and basketball game programs.
6

7 3. Defendant PBA is a named insured under the insurance contracts at issue
8 here. PBA is a member of Sports, Leisure & entertainment RPG, through which it obtained
9 insurance coverage.

10 4. Defendant Jonnie R. Barr resides in Puyallup, Pierce County, Washington,
11 and owns PBA with his wife. Upon information and belief, Mr. Barr is a principal and/or
12 employee of PBA.
13

14 5. Defendant Sue Ellen Barr resides in Puyallup, Pierce County, Washington,
15 and owns PBA with her husband. Upon information and belief, Ms. Barr is a principal
16 and/or employee of PBA.

17 6. Defendant Shari Furnstahl and her daughter C.F., reside in Sumner and/or
18 Lake Tapps, Pierce County, Washington. Although not insured under the insurance
19 contract at issue here, this defendant is included herein because she may have a derivative
20 interest in the outcome of this declaratory ruling by the Court.
21

22 II. Jurisdiction and Venue

23 7. This Court has jurisdiction over this action by diversity pursuant to 28
24 U.S.C. §1332, inasmuch as the plaintiff Nationwide (Ohio) and the defendants
25 (Washington) are citizens of different states, and the amount in controversy between the
26

1 parties relates to insurance coverage for a claim, wherein the demand by Ms. Furnstahl and
2 C.F. in the underlying action (*Furnstahl v. Barr, et al.*, No. 14-2-07951-1, Pierce County
3 Superior Court, Washington) is well in excess of the jurisdictional amount of \$75,000.
4

5 8. Venue is proper in this federal district, because the insurance policy issued
6 to the defendant PBA was issued in Pierce County, Washington, and because all
7 defendants reside in the district and within Pierce County.

8 **III. Factual Background**

9
10 9. Plaintiff Nationwide issued two potentially applicable insurance policies to
11 the defendant PBA through Sports, Leisure & Entertainment.

12 10. The first certificate of insurance for PBA is dated November 18, 2009, and
13 names "Puyallup Basketball" as an insured under the Sports, Leisure & Entertainment
14 policy number 6BRPG0000004470500, comprehensive general liability coverage ("2009
15 Policy"). The second certificate is dated December 1, 2010, for coverage PBA under the
16 Sports, Leisure & Entertainment policy number 6BRPG0000004798700, comprehensive
17 general liability coverage ("2010 Policy"). These certificates of insurance and policies
18 cover occurrences under the 2009 Policy for one year from December 30, 2009, and 2010
19 Policy for one year from December 30, 2010 through December 30, 2011.
20

21 11. Defendant PBA and the defendant Barrs were sued on April 18, 2014, in
22 Washington state court ("Underlying Suit"), by the defendant Shari Furnstahl as guardian
23 for her minor daughter C.F.
24
25
26

1 12. The Underlying Suit alleged that while 7-8 years old and while she was
2 attending PBA from September 2010 to September 2011, C.F. was “assaulted”, falsely
3 imprisoned, unlawfully detained, and had her privacy invaded. Without any factual detail,
4 the Underlying Suit listed the causes of action as “negligence, invasion of privacy, battery,
5 assault, intentional infliction of emotional distress, and false imprisonment”.

7 13. Upon information and belief, the Underlying Suit is based foundationally on
8 actions by the defendant Mr. Barr, who agreed to a plea of guilty to 4th degree Assault on
9 November 4, 2013. In that criminal court record in Pierce County District Court, Mr. Barr
10 wrote that “I assaulted another person (CNF, DOB 9/13/03) intentionally by having
11 unpermitted and/or offensive contact with that person.”

13 14. The Barrs and PBA sought insurance coverage and defense counsel from
14 the plaintiff Nationwide for the Underlying Suit. On May 3, 2014, the plaintiff
15 Nationwide, though counsel, issued a reservation of rights letter to the defendants PBA and
16 the Barrs, and defense counsel was assigned to them for a defense of the Underlying Suit
17 pending further information about the “intentional”, “criminal” and “sexual” nature of the
18 allegations and factual background.

20 15. The 2009 Policy provides coverage for “sums that the insured becomes
21 obligated to pay as damages because of the ‘bodily injury’ . . . to which the insurance
22 applies. We will have the right and duty to defend the insured against any ‘suit’ seeking
23 those damages. However, we will have no duty to defend the insured against any ‘suit’
24
25
26

1 seeking damages for ‘bodily injury’ . . . to which the insurance does not apply. . . .” (CG
2 00011204) The 2010 Policy has similar language.

3
4 16. The 2009 Policy and the 2010 Policy does not provide coverage for
5 emotional distress or mental suffering, unless specifically “resulting from bodily injury,
6 sickness, or disease.” (SRPG 26387)

7
8 17. In addition, the following exclusions of coverage for intentional conduct are
9 listed therein:

10 1. Exclusions

11 This insurance does not apply to:

12 a. Expected or Intended Injury

13 “Bodily injury” . . . expected or intended from the standpoint of the
14 insured. (CGL Coverage Form, Section 1 – Coverages;
Endorsement SRPG26387)

15 18. In addition, there is an exclusion for any criminal activity in Endorsement
16 SRPG26583, “Professional Liability Coverage”. The contract excludes coverage for “any
17 liability arising out of any dishonest, fraudulent or criminal act committed by any insured.”
18 SRPG26583 (emphasis added).

19 19. In addition, exclusions to coverage are listed therein for abuse, assault, and
20 any intentional sexual misconduct:

21
22 This insurance does not apply to . . . (a) the actual, threatened or alleged
23 abuse, molestation, harassment or sexual conduct by anyone of any
24 person in your care, custody and control. . . . (SRPG 8015 -- Abuse,
Molestation, Harassment or Sexual Conduct Exclusion; SRPG 2146)

25 20. In addition, exclusions to coverage are contained therein for negligent
26 supervision of someone who abuses, assaults or engages in sexual misconduct:

1 This insurance does not apply to . . . (b) the negligent . . . (iii) supervision
 2 . . . of a person for whom any insured is or ever was legally responsible
 3 and whose conduct would be excluded by (a) above [abuse, molestation,
 harassment or sexual conduct]. (SRPG 8015; SRPG 2146)

4 21. Other exclusions and reasons may apply to the Court's consideration of this
 5 coverage question, and the Complaint refers the Court to both the 2009 Policy and the
 6 2010 Policy for additional reasons the insurance does not apply and exclusions of
 7 coverage. By way of example only and not limited hereto, the policies exclude "child care
 8 services" (SRPG26055). Upon information and belief, the defendant Furnstahl may claim
 9 below that Mr. Barr's unwanted touching and/or kissing occurred after basketball practice,
 10 in a restaurant, or at the Barrs' home. Such times, when the Barrs were providing child
 11 care for Ms. Furnstahl, are not covered under these policies.
 12

13 22. The parties, including the plaintiff Nationwide, have attempted resolution
 14 by mediation, but have been unable to date to resolve the Underlying Suit.
 15

16 23. Trial in the Underlying Suit is presently scheduled in state court for October
 17 15, 2015.
 18

19 IV. Cause of Action (Declaratory Request)

20 24. The plaintiff Nationwide reasserts the facts and allegations set forth in
 21 paragraphs 1 through 23 above.
 22

23 25. The plaintiff Nationwide asserts that there is an actual controversy within
 24 the Court's jurisdiction, because the insured PBA and the Barrs have demanded coverage
 25 and a defense against the Underlying Suit and because the plaintiff Nationwide has
 26

1 asserted a reservation of rights as to coverage, which requires the Court's determination of
2 such rights.

3 26. In accordance with the facts, allegations, and insurance provisions set forth
4 above, the plaintiff Nationwide asserts that there is no insurance coverage for the defendant
5 Mr. Barr's actions under the 2009 Policy and the 2010 Policy, and seeks the Court's
6 declaration that there is no such insurance coverage thereunder.
7

8 27. In accordance with the facts, allegations, and insurance provisions set forth
9 above, the plaintiff Nationwide asserts that there is no insurance coverage for the
10 defendants Ms. Barr or PBA under the 2009 Policy and the 2010 Policy, because whatever
11 negligence is claimed against them is derivative of Mr. Barr's non-covered actions, and
12 seeks the Court's declaration that there is no such insurance coverage thereunder.
13

14 28. In accordance with the facts, allegations, and insurance provisions set forth
15 above, the plaintiff Nationwide asserts that because there is no insurance coverage for the
16 defendants Mr. and Ms. Barr or for defendant PBA under the 2009 Policy and the 2010
17 Policy, there is no broader duty to defend, either, and seeks the Court's declaration that
18 there is no duty to defend thereunder.
19

20 **VIII. Relief Requested and Prayer**

21 29. The plaintiff Nationwide requests the Court's consideration of whether
22 there is coverage under the 2009 Policy and/or under the 2010 Policy, when the
23 Underlying Suit bases its allegations on intentional and/or criminal actions and when all
24
25
26

1 causes of actions made in the Underlying Suit flow from those intentional and/or criminal
2 actions.

3 30. The plaintiff Nationwide requests that the Court enter judgment stating that
4 the 2009 Policy and the 2010 Policy do not provide coverage and do not apply to the
5 allegations made against PBA or the Barrs.
6

7 31. The plaintiff Nationwide requests that the Court enter judgment stating that
8 Nationwide may deny coverage for PBA and the Barrs, and that it has no further duty to
9 defend PBA or the Barrs.

10 32. The plaintiff Nationwide hereby pleads all other conditions, terms,
11 limitations, definitions and exclusions under the applicable policies that may be found
12 necessary for the Court's consideration, and reserves the right to amend this Complaint for
13 Declaratory Judgment, as necessary.
14

15 33. The plaintiff Nationwide further prays for all other and further relief as is
16 equitable and just, including attorney fees and legal costs under 28 U.S.C. §2202.
17

18 **DATED this 2nd day of March, 2015, at Seattle, Washington.**

19 **JOHNSON, GRAFFE, KEAY,
20 MONIZ & WICK, LLP**

21 By 

D. Jeffrey Burnham, WSBA #22679

Michelle A. Taft, WSBA #46943

Attorneys for Plaintiff Nationwide

925 4th Avenue, Suite 2300

Seattle, WA 98104

djburnham@igkmw.com

taftm@igkmw.com

206-223-4770

26 **COMPLAINT FOR DECLARATORY JUDGMENT**

- 8

**JOHNSON, GRAFFE,
KEAY, MONIZ & WICK, LLP**

ATTORNEYS AT LAW

925 FOURTH AVENUE, SUITE 2300

SEATTLE, WASHINGTON 98104

PHONE (206) 223-4770

FACSIMILE (206) 386-7344